

(1)

RESOLUTIONS

OF THE

COURT-MARTIAL,

UPON THE

Several Articles of the CHARGE
against *Thomas Mathews*, Esq;
previous to the pronouncing Sen-
tence.

ARTICLE I.

THERE being no positive general Instruc-
tions that direct Commanders in Chief to
call Councils of War, the Court are unanimously
of Opinion, that the Charge contained in this
Article is not criminal in itself ; but that a Com-
mander in Chief who has the Opportunity, and
neglects to call them, makes himself the more strictly
accountable for Consequences ; which Oppor-
tunity, it appears to the Court, Admiral *Mathews*
had on the 9th, 10th, and 12th of *February*.

Unanimous.

ARTICLE II.

The Court are unanimously of Opinion, that
as there is a Body of general printed Signals pro-
vided

B

vided for Guidance and Direction of his Majesty's Fleet, no Commander in Chief who delivers those Signals to the respective Commanders under him, can be judiciously censured for omitting to make Additions to them ; nevertheless it is incumbent on him to make his Signals in so plain and distinct a Manner, that no Mistake or Misapprehension of them may arise in the Fleet ; and it appears to the Court, that no Direction was given to the Fleet the Night of the 10th of *February* 1743 (by the Night-Signal then made) to form the Line of Battle, and to bring-to and keep in the Line ; and the Day-Signal for forming the Line a-breast ceased to be a Signal, by ceasing to be visible.

Unanimous.

ARTICLE III.

Resolved unanimously, That considering the Situation of the two Fleets in the Morning of the 11th of *February*, and the Sail made by the Center of his Majesty's Fleet during that Morning, it does not appear to the Court, that the Admiral did not give sufficient Time for the Van-Division to come up to form and close the Line of Battle ; at the same time it appears, that he did not lye-by or shorten Sail, sufficient for the Rear-division to come up : Nevertheless the Court are not of Opinion, that the Admiral by bearing down upon the combined Fleets in the Morning with the Centre and Van, did act contrary to Discipline, or in breach of his Duty,
or

(3)

or that he thereby brought his Majesty's Fleet into great Danger; because it appears to the Court, that the Center and Van-Divisions of his Majesty's Fleet, were at least equal to that part of the combined Fleet, that extended from the *Spanish* Admiral's Second a-stern, to the Leader of the Van. Nor has it appeared that the Message Lieutenant *Jasper* carried, was to acquaint the Vice-Admiral, that the Admiral would lye by for the Rear-Division to come up, and close the Line.

Unanimous.

ARTICLE IV.

Resolved, That it appears to the Court, that Mr. *Mathews* did make the Signal to engage, before his Majesty's Fleet under his Command was ready and formed in order of Battle, which is contrary to Discipline and the usual Practice of Flag-Officers commanding in Chief. But though the *French* crouding Sail might be a Consequence of that Signal, yet it does not follow, that the Consequence was necessary. The Admiral not using the Means, said to be in his Power, to form and keep the Fleet in Line of Battle, is answered by the Court's Determination on the preceding Article.

Unanimous.

ARTICLE V.

1. The Court are of Opinion, that the Admiral did not steer a proper Course on the 11th of *February* to bring the Van and Center of his Majesty's Fleet, to engage the Van and Center of the combined Fleet, as he had the Weather-Gage.

Yes 14.

Dubious 5.

2. The Court are of Opinion, that the Admiral had it in his Power on the 11th of *February*, considering the Circumstances of the two Fleets, to bring the Van and Center of his Majesty's Fleet, to engage the Van and Center of the combined Fleet.

Yes 14.

No's 5.

3. The Court are of Opinion, that after the *French* Admiral made more Sail, and went ahead of his Majesty's Fleet on the 11th of *February*, the Admiral acted in Breach of his Duty, and brought his Majesty's Fleet into improper Danger, by bearing down on the Rear of the Enemy's Fleet, and engaging the *Spanish* Admiral ; whereby the Van of his Majesty's Fleet, and the Rear of the Enemy's Fleet, were respectively opposed at unequal Advantage.

Yes 11.

No's 8.

ARTICLE VI.

2. *Resolved unanimously*, That it does appear to the Court, that if every Ship of his Majesty's Fleet that was stationed a-head of the Admiral, had placed herself against the respective Ship in the Enemy's Fleet, that was properly opposed to her, when the Admiral had bore down to the *Real*; the Ships of the combined Fleet would have extended no more than four Ships beyond the Van of his Majesty's Fleet, including the three Ships of fifty Guns on each Side.

Unanimous.

1. *Resolved*, That it does not appear to the Court, that all the Matter as stated in the sixth Article of the Charge has been proved.
3. *Resolved unanimously*, That it does not appear to the Court, that the Admiral by bearing away to attack the *Spanish* Admiral, did occasion all the Ships from the *Princess Caroline* posted in the Line of Battle of his Majesty's Fleet to the *Dunkirk*, to fire at the *Spanish* Squadron in the Rear of the combined Fleet.

Unanimous.

ARTICLE VII.

1. *Resolved*, That it does appear to the Court that the Matter, as stated in this Seventh Article of the Charge, has been proved in Part.

Yes 13.

Proved in the Whole 6.

2. *Resolved unanimously*, That it has appeared to the Court, that the Admiral did continue about an Hour (but not exceeded it) in close Engagement with the *Real*, before he shot a-head.

Unanimous.

3. *Resolved*, That it has appeared to the Court, that the Admiral's shooting a-head from his close Engagement with the *Real*, was occasioned, as he sets forth in his Defence, by the apparent Danger the *Namur* was in of the *Marlborough's* coming on board her.

Yes 12

No 6

Dubious 1

4. *Resolved*, That it does not appear to the Court, that the *Namur*, after shooting a-head from the *Marlborough*, was incapable of returning again that Day to the Engagement in any manner with the *Real*, to the Assistance of the *Marlborough*.

18 to 1

5. The Court are of opinion, that it was the Admiral's Duty to have returned with the *Namur* to the Engagement with the *Real*, tho' he had four Ships inactive in the Rear of his Division.

12 to 7

6. *Resolved*, That it appears to the Court that the Admiral sent Orders to the *Dorsetshire*, to assist the *Marlborough* during her Engagement with the *Real*.

18 to 1

7. *Resolved*, That it does not appear to the Court, that the Admiral sent those Orders so soon as he shot a-head, and was withdrawn from the *Real*.

18 to 1

8. *Resolved*, That it does not appear to the Court, that the Admiral sent those Orders time enough for the effectual Relief of the *Marlbrough*.

14 to 5

9. *Resolved unanimously*, That it does not appear to the Court, that any Ship went to the effectual Relief or Assistance of the *Marlbrough*, while she continued engaged with the *Real* and her Second a-stern, and hard press'd after the *Namur* shot a-head.

Unanimous.

10. *Resolved unanimously*, That it does appear to the Court, that the Admiral ordered two Frigates to take care of the *Marlbrough*, on the Evening of the 11th of February.

Unanimous.

ARTICLE VIII.

1. The Court are unanimously of opinion, that the Admiral did not make such a Disposition of the Ships under his Command, after the Engagement begun with the Enemy, as to engage them according to their Inferiority, and to as much advantage as he might have done.

Unanimous.

The

2. The Court are unanimously of Opinion, that the Admiral was in a Situation after he shot ahead of the *Marlborough*, from which he might and ought to have seen the Neglect of Duty in the Ships of his Division a-stern of him, viz. The *Dorsetshire*, *Essex*, *Rupert*, and *Royal-Oak*.
Unanimous.

3. The Court are unanimously of Opinion, that the Admiral did see the Neglect of Duty in those Ships, or some of them.
Unanimous.

4. *Resolved unanimously*, That it has appeared to the Court, that the Admiral did connive at the notorious Breaches of Duty in others under his Command, and that he did not send for the Captains who failed in their Duty, and appoint others in their Room, whereby so good an Opportunity of destroying the Enemy was lost.
Unanimous.

ARTICLE IX.

1. The Court are Unanimously of Opinion, that the Matter contained in this Ninth Article is proved in part.

Unanimous.

2. The Court are of Opinion, that the Admiral gave timely, and necessary Directions for priming the Fire-Ship.

18 to 1

Resolved;

3. *Resolved unanimously*, That it has appeared to the Court, that the Admiral sent Orders to the *Dorsetshire* to go down and cover the Fire-Ship.

Unanimous.

4. *Resolved unanimously*, That it has appeared to the Court, that the Admiral did not send those Orders to the *Dorsetshire* in due Time for her effectual Performance of that Service.

Unanimous.

5. *Resolved unanimously*, That it has appeared to the Court, that the *Dorsetshire* did not cover and conduct the Fire-Ship.

Unanimous.

6. *Resolved*, That it has appeared to the Court, that the Admiral bore-down in the *Namur*, at the Time the Fire-Ship was going down.

17 to 2

7. *Resolved*, That it has appeared to the Court, that the Admiral did not bear-down with the Fire-Ship, and cover her.

18 to 1

8. *Resolved*, That it has appeared to the Court, that the Fire-Ship was not covered, nor conducted, by any Ship of His Majesty's Fleet.

18 to 1

9. *Resolved unanimously*, That it has appeared to the Court, that the Fire-Ship sunk, or blew

C

up

up without doing Execution, or performing the Service she was sent to perform.

Unanimous.

10. The Court are of Opinion that the Fire-Ship's Miscarriage arose in some Degree from the Neglect of sending some Ship in due Time to cover and conduct her.

18 to 1

ARTICLE X.

1. *Resolved unanimously*, That it has appeared to the Court, that soon after the Fire-Ship blew up, the Rear-Admiral and the Van of His Majesty's Fleet did stand towards the Center on the contrary Tack to the Line of Battle.

Unanimous.

2. *Resolved unanimously*, That it has appeared to the Court, that the Van of His Majesty's Fleet tacked and stood towards the Center, to avoid the *French* Squadron which was standing on the same Tack.

Unanimous.

3. *Resolved*, That it has not appeared to the Court, that the Van of His Majesty's Fleet did then croud Sail.

Yes 13

No 1

Doubtful 5

4. *Resolved*,

4. *Resolved*, That it has appeared to the Court, that the *French* Squadron was standing on that Tack, both in pursuit of the Van of His Majesty's Fleet, and to the Relief and Assistance of the Rear of the combined Fleet.

Yes 11

To the latter Part 6

Dubious 2

5. *Resolved unanimously*, That it has appeared to the Court, that when the *French* Squadron passed under the Stern of the Rear-Admiral, and other Ships in his Division, they did not attack and fire into such of His Majesty's Ships as they passed near to.

Unanimous.

6. *Resolved*, that it has appeared to the Court, that after the *French* Squadron had passed under the Stern of the Rear-Admiral and his Division, they bore away towards the Rear of the Combined Fleet.

Yes 18

Doubtful 1

7. *Resolved unanimously*, That it has appeared to the Court, that at the Time the Van of His Majesty's Fleet tacked, or soon after, the Admiral did cause to be hauled down the Signal, for the Line of Battle and for Engaging, and did make the Signal for leaving off Chace, and wear and stand on the Starboard Tack, from the Enemy.

Unanimous.

8. It is the Opinion of the Court, That the Admiral wore to the Northward before the *French* had bore away under the Stern of the Rear-Admiral's Division.

Yeas 9
Doubtful 10

9. *Resolved unanimously*, That it does appear to the Court, that at the Time the Admiral wore, and stood on the Starboard-tack from the Enemy, the *Poder*, a *Spanish* Sixty-gun Ship, was in the Possession of his Majesty's Fleet.

Unanimous.

10. *Resolved unanimously*, That it has not appear'd to the Court, that any Report was made to the Admiral, before he wore, of the *Poder's* being taken.

Unanimous.

11. *Resolved unanimously*, That it has appear'd to the Court, that the *Poder's* *Spanish* Colours were struck, and *British* Colours hoisted on board her, before the Admiral wore.

Unanimous.

12. *Resolved*, That it has appear'd to the Court, that the Admiral was in a Situation, from whence he might have seen the *British* Colours flying on board the *Poder*; and that there was Day-light sufficient for him to have discern'd them.

Yes 14
No 1
Doubtful 4

13. *Resolved unanimously*, That it has appear'd to the Court, that the Enemy was in Possession of the *Poder* the Morning of the 12th of *February*.

Unanimous.

14. *Resolved unanimously*, That it has not appear'd to the Court, that the Enemy's Fleet bore down and re-took the *Poder*, before his Majesty's Fleet, by standing to the Northward, had forsaken her.

Unanimous.

15. *Resolved*, That it has appear'd to the Court, that the Admiral did continue to stand from the Enemy, and did ply to Windward with an easy Sail all the Night of the 11th.

Yes 18

No 1

16. *Resolved*, That it has appear'd to the Court, that there was a great Swell and little Wind the greatest Part of the Night of the 11th; and that several of his Majesty's Ships, and particularly the *Russel*, (the Ship the Admiral was in) had not at some times Wind enough to command them.

Yes 18

No 1

17. *Resolved unanimously*, That it has not appear'd to the Court, that the Admiral did send any Cruiser, the Night of the 11th, to observe the Enemy's Motions.

Unanimous.

18. *Resolved unanimously*, That it has appear'd to the Court, that from the 11th in the Evening to Day-break of the 12th, the Distance between his Majesty's Fleet and the Combin'd Fleet, was increased from Musket-shot, to at least four Leagues.

Unanimous.

19. *Resolved*, That it has appear'd to the Court, that the Admiral could not, all the 12th Day of *February*, while Day-light continued, get up to engage and join in Battle with the Combin'd Fleets of the Enemy.

Yes 15

No 3

Doubtful 1

20. *Resolved*, That it has not appear'd to the Court, that the Admiral could have come up with a sufficient Force to have attack'd the Combin'd Fleet on the 12th of *February*, had he used the proper Means, from Day-light in the Morning to the Close of the Evening.

14 to 4, and 1 Doubtful.

ARTICLE XI.

1. *Resolved unanimously*, That it has appear'd to the Court, that the Admiral saw, pursu'd, and gain'd upon the Combin'd Fleets of *France* and *Spain*, his Majesty's Enemies, on the 12th of *February*.

Unanimous.

2. *Resolved unanimously*, That it has appear'd to the Court, that the Admiral, when gaining upon his Majesty's Enemies retreating or flying, on the 12th of *February* in the Evening, did bring-to with the Fleet under his Command.

Unanimous.

3. *Resolved unanimously*, That it has appear'd to the Court, that no Cruiser was sent by the Admiral to observe the Enemies Motions, while the Fleet lay-to on the 12th of *February* at Night.

Unanimous.

4. *Resolved unanimously*, That it has not appear'd to the Court, that there was so large a Part of his Majesty's Fleet disabled as to make it unsafe and imprudent to continue the Pursuit of the Enemy, on the Evening of the 12th of *February*.

Unanimous.

5. *Resolved unanimously*, That it has appear'd to the Court, that his Majesty's Fleet had the Weather-gage of the Enemy; and that the Weather was fine on the Evening of the 12th of *February*.

Unanimous.

6. *Resolved unanimously*, That his Majesty's Fleet was superior to the Combin'd Fleet on the 12th of *February* in the Evening.

Unanimous.

7. *Resolved unanimously*, That the Weather being fine, and his Majesty's Fleet having the Weather-gage of the Combin'd Fleets, who continued retreating

retreating or flying, and being superior to them, there does not appear to the Court any justifiable Reason for bringing-to on the Evening of the 12th of *February*.

Unanimous.

8. *Resolved unanimously*, That it does appear to the Court, that his Majesty's Fleet made Sail (after bringing-to on the 12th of *February* in the Evening) at half past Two in the Morning of the 13th.

Unanimous.

9. *Resolved unanimously*, That it does appear to the Court, that the Admiral, by causing the Fleet under his Command to bring-to on the 12th of *February* in the Evening, and lie-to till half past Two in the Morning of the 13th, and by not sending any Cruiser to lie between the two Fleets, and observe the Motions of the Enemy, did forbear and keep back from the Pursuit of his Majesty's Enemies retreating or flying, contrary to the Instructions and the Articles of War.

Unanimous.

ARTICLE XII.

The Court are unanimously of Opinion, That the Admiral, by ordering the *Poder* to be burnt, did not act contrary to his Orders and Instructions, nor was guilty of any Breach of Duty.

Unanimous.

ART I-

ARTICLE XIII.

1. *Resolved unanimously*, That it has appear'd to the Court, that some Part of the Combin'd Fleet was seen by some of his Majesty's Fleet on the 13th of *February* in the Morning.

Unanimous.

2. *Resolved unanimously*, That it has appear'd to the Court, that the Vice-Admiral made the Signal for seeing Part of the Enemy's Fleet on the 13th of *February* in the Morning.

Unanimous.

3. *Resolved unanimously*, That it has appear'd to the Court, that the Vice-Admiral and his Division did chace the Enemy on the 13th of *February* in the Morning, in consequence of a Signal from the Admiral.

Unanimous.

4. *Resolved unanimously*, That it has appear'd to the Court, that the Admiral made the Signal for the Vice-Admiral to leave off Chace on the 13th of *February* in the Morning; and that the Vice-Admiral and his Division, in Obedience to the said Signal, did leave off Chace.

Unanimous.

5. *Resolved unanimously*, That it has appear'd to the Court, that at the Time the Admiral made the Signal to leave off Chace on the 13th of *February* in the Morning, the Wind increased.

Unanimous.

6. *Resolved*, That it has appear'd to the Court, that at the Time the Admiral made the Signal to leave off Chace on the 13th of *February* in the Morning, it blew hard.

<i>Yes</i>	12
<i>No</i>	1
<i>Fresh</i>	6

7. Has it appear'd to the Court, that the Fleet of the Enemy, or Part of them, were seen from the *Russel* (the Ship in which the Admiral was) on the 13th of *February* in the Morning?

<i>Yes</i>	9
<i>No</i>	3
<i>Doubtful</i>	7

8. Has it appear'd to the Court, that the Admiral was made acquainted with the Enemy's being seen from the *Russel* on the 13th of *February* in the Morning?

<i>Yes</i>	5
<i>No</i>	5
<i>Doubtful</i>	9

9. The Court are of Opinion, That the Circumstance of Wind, Weather, and the great Distance of the Admiral from the Enemy, being consider'd, do not justify him for bringing-to, calling the Vice-Admiral and his Division off the Chace, and forbearing the Pursuit of the Enemy on the 13th of *February* in the Morning.

11 to 8

10. *Resolved unanimously*, That it has appear'd to the Court, that the Signal made by the Admiral on the 13th of *February* in the Morning, was for the Vice-Admiral to send out Ships to chace.

Unanimous.

ARTICLE XIV.

The Court are unanimously of Opinion, That this Article is a Recapitulation of the preceding ones; and that they have consider'd it already under those several Articles.

Unanimous.

ARTICLE XV.

The Court are unanimously of Opinion, That the Admiral commanding in Chief, by divers Breaches of his Duty, was a principal Cause of the Miscarriage of his Majesty's Fleet in the *Mediterranean*, in the Month of *February*, 1743.

Unanimous.

At a COURT-MARTIAL held on Board his Majesty's Ship the *Prince of Orange* at Deptford, by several Adjournments between the 16th of June, and the 22d of October 1746,

PRESENT

Perry Mayne, Esq; Rear-Admiral of the Red, and Commander in Chief of his Majesty's Ships and Vessels in the Rivers *Thames* and *Medway*, and at the *Buoy of the Nore*, PRESIDENT.

Hon. *John Byng*, Esq; Rear-Adm^l. of the Blue.

Hon. Captain *Legge*,

Captain *Frankland*,

Colby,

Laton,

Sir *Charles Molloy*,

Captain *Pitman*,

Hanway,

Spragge,

Stapleton,

Captain *Rentone*,

Sir *William Hewett*,

Hon. Capt. *Hamilton*,

Captain *Hamar*,

Callis,

Catford,

Elliot,

Orme,

All being duly sworn according to Act of Parliament.

The

The Court, pursuant to two Orders from the Right Honourable the Lords Commissioners for executing the Office of Lord High Admiral of *Great-Britain* and *Ireland*, &c. to *Perry Mayne*, Esq; dated the 10th of *March* 1745, and 18th of *July* 1746, proceeded to enquire into the Conduct of *Thomas Mathews*, Esq; in Relation to the late Engagement between his Majesty's Fleet and the combined Fleets of *France* and *Spain* off *Toulon*, and to try him for the same upon a Charge prepared against him by the Prosecutors in behalf of the Crown; and the Court having examined the Witnesses produced as well in support of the Charge, as in behalf of the Prisoner, and having thoroughly considered their Evidence, do unanimously resolve, That it appears thereby that *Thomas Mathews*, Esq; by divers Breaches of Duty, was a principal Cause of the Miscarriage of his Majesty's Fleet in the *Mediterranean* in the Month of *February* 1743; and that he falls under the 14th Article of an Act of the 13. Car. II. for establishing Articles and Orders for the Regulating and better Government of his Majesty's Navies, Ships of War, and Forces by Sea: and the Court do unanimously think fit to adjudge the said *Thomas Mathews* to be cashiered, and rendered incapable of any Employ in his Majesty's Service. And the said *Thomas Mathews*, is hereby adjudged to be cashiered,

shiered, and render'd incapable of any Employ in
his Majesty's Service accordingly.

P. Mayne,
J. Byng,
M. Stapleton,
E. Legge,
James Rentone,
Thomas Frankland,
William Hewett,
Charles Colby,
John Hamilton,
Sheldrake Laton,
Joseph Hamar,
Charles Molloy,
Smith Callis,
John Pitman,
Charles Catford,
Thomas Hanway,
George Elliot,
E. Spragge,
John Orme.

Charles Fearne,
Jud. Ad.

